

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDY BEAVERS,

Defendant-Appellant.

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UNPUBLISHED

June 10, 2004

No. 246226

Wayne Circuit Court

LC No. 01-011768-01

Before: Sawyer, P.J., and Gage and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for first-degree home invasion, MCL 750.110a(2), and three counts of kidnapping, MCL 750.349. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant asserts that there was insufficient evidence to support his convictions. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

MCL 750.110a(2) provides:

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling.

There was sufficient evidence to allow the court to conclude that defendant entered complainant's dwelling without permission. Although he previously lived in the home, complainant testified that he had moved out, and that she told him he was not allowed in the house. Where defendant crashed through a bathroom window in the middle of the night, it was reasonable to conclude that he was not entering under claim of right.

A person can be convicted of kidnapping if it is proven beyond a reasonable doubt that he willfully, maliciously, and without lawful authority forcefully or secretly confined or imprisoned any other person against his or her will. *People v Wesley*, 421 Mich 375, 383; 365 NW2d 692 (1984). Asportation of the victim is a judicially required element of the crime read into the statute to distinguish kidnapping from lesser crimes. *People v Jaffray*, 445 Mich 287, 298; 519 NW2d 108 (1994).

Here, there was evidence that defendant forced complainant and the two children into the car, then drove them away. There was sufficient evidence to conclude that the movement was not merely incidental to the crime. *People v Green*, 228 Mich App 684, 697; 580 NW2d 444 (1998). Where there was sufficient evidence to support all of defendant's convictions, there is no basis for resentencing.

Affirmed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens